

Rule 609 Subcommittee Recommendation

The Rule 609 subcommittee recommends that ARE 609 be amended in such manner as to adopt the approach reflected in FRE 609, i.e., the underlying premise for introducing evidence of prior convictions will be to attack the character for truthfulness of a witness rather than his/her credibility.

Members of the subcommittee were unable to locate any Arizona cases that might shed light on the Arizona Supreme Court's reason for focusing on witness "credibility" when it promulgated ARE 609 in 1977. In *Ohlmaier v. Ind'l Comm'n of Ariz.*, 161 Ariz. 113, 776 P.2d 791 (1989), the court observed that "credibility is a larger question than truthfulness." 161 Ariz. at 115. Although the issue before the court was quite narrow, and the utility of the quoted language for our purposes is limited, it *Ohlmaier* provides a starting point for distinguishing between credibility and character for truthfulness.

The subcommittee agrees with Professor Dan Capra's observation to the effect that the term "credibility" is, at best, imprecise in the context of Rule 609 because it is simply too broad. Professor Capra also points out that Rule 608(b), which originally used the term "credibility," was amended in 2003 because of the imprecision identified. The subcommittee believes that, given their comparable purposes in the "scheme" of Article 6, both Rules 608 and 609 should focus on character for truthfulness rather than credibility.